

Chapter NR 150

ENVIRONMENTAL IMPACT STATEMENT
PROCEDURES AND PREPARATION FEES

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Note: Chapter NR 150 as it existed on January 31, 1979 was repealed and a new chapter NR 150 was created effective February 1, 1979.

NR 150.01 Purpose and authority. The purpose of this chapter is:

(1) To provide principles, objectives, definitions and criteria to be used by the department in the implementation of ss. 1.11, 23.11 (5), and 23.40, Stats. Implementation includes the evaluation of proposed actions and the preparation and review of environmental impact statements (EIS's).

(2) To establish the identification of major actions significantly affecting the quality of the human environment and the need for an EIS.

(3) To provide guidance to applicants seeking permission to proceed with a proposed action, which the department may grant, in determining the applicable procedure affecting the department's review of their proposals, and to establish a mechanism for an early review of an applicant's proposal to determine the need for an environmental impact report (EIR) and EIS.

(4) To require governmental consideration of the short- and long-term environmental and economic effects of policies, plans and programs upon the human environment.

(5) To provide an opportunity for public input to the decision-making process.

History: Cr. Register, January, 1979, No. 277, off. 2-1-79.

NR 150.02 Definitions. (1) "WEPA" means the Wisconsin Environmental Policy Act (s. 1.11, Stats.).

(2) "NEPA" means the National Environmental Policy Act (P.L. 91-190).

(3) "Department" means the department of natural resources.

(4) "EIS" means environmental impact statement. It is a written report prepared pursuant to s. 1.11, Stats., which contains an analysis of the possible impacts of a proposed action upon the human environment.

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(5) "PER" means preliminary environmental report. It is a draft of the environmental impact statement.

(6) "EIR" means environmental impact report. It is a disclosure document, submitted pursuant to s. 23.11 (5), Stats., by a person seeking a permit or statutory approval.

(7) "Environmental assessment screening worksheet" (EASW) means a documented brief but comprehensive analysis of a proposed Type II action to determine its environmental impact, study alternatives and determine whether the proposed action constitutes a major state action significantly affecting the quality of the human environment.

(8) "Statement of nonsignificant impact" means a completed environmental assessment screening worksheet which indicates that the proposed action is not a major action which will significantly affect the quality of the human environment and that no EIS is required.

(9) "Action" means any activity, pursuit or procedure requiring permission from the department, or any department activity, pursuit or procedure which may affect the human environment.

(10) "Major action" means an action of magnitude and complexity which will notably or seriously affect the quality of the human environment.

(11) "Significant effect" means considerable and important impacts of major state actions which have long-term effects on the maintenance of the human environment.

(12) "Human environment" means the totality of conditions and influences, both natural and man-made, which surround and affect all organisms, including man.

(13) "Resources" means financial, cultural and natural matter and forms as well as labor and materials used and affected by a proposed action if permitted.

(14) "Lead agency" means the agency with primary concern or responsibility for a given action as determined through interagency consultation or memorandum of understanding.

(15) "Inadequate EIS" means an EIS that fails to reasonably examine possible and real environmental effects, alternatives, modifications, procedural requirements, and other factors required and further described in WEPA and this chapter.

(16) "Alternatives" means other actions or activities which may be reasonably available to achieve the same or altered purpose(s) of the proposed action.

(17) "Person" means any person, firm, partnership, joint venture, joint stock company, association, public or private corporation, the state of Wisconsin and all political subdivisions, cooperative, estate, trust, receiver, executor, administrator, fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(e) If other statutory time limits for department action conflict with the comment and review procedure set out in this subsection, the procedure may be adjusted so long as agency and public input is assured.

(2) Distribution and review of the EIS. (a) The EIS shall be distributed in the same manner as the PER.

(b) A nominal charge may be assessed to individuals or groups requesting the EIS to cover reproduction and handling costs.

(c) The availability of the EIS will be announced through a notice of public hearing or through an announcement sheet similar to the announcement of the availability of the PER.

(d) Period of time for comment on the EIS. 1. A period of not less than 30 days and not more than 90 days from the date the EIS is mailed, depending on the length and complexity of the EIS, shall be allowed for receipt of comments from state and federal agencies and the public.

2. If other statutory time limits for department action conflict with the comment and review procedure set out in this subsection, the procedure may be adjusted so long as agency and public input is assured.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 150.09 Public hearing on the EIS. (1) **INFORMATIONAL MEETING ON PER.** Whenever a proposed action requires an EIS, the department shall hold an informational meeting on the PER in not less than 30 days from the date of its issuance. The location and notice of the meeting shall be as provided in subs. (2) (b) and (2) (c) respectively.

(2) **EIS INFORMATIONAL HEARINGS.** (a) The department shall hold a public informational hearing, in accordance with s. 227.022, Stats., on the action or proposal and the EIS prior to making its decision. The hearing shall be held not less than 30 days after issuance of the EIS. The EIS shall be entered into the record of the hearing. Comments may be received and testimony taken on the action or proposal and the EIS. The schedule for submission of written comments shall be set before the close of the hearing by the department.

(b) The hearing shall be held in the locality affected, unless otherwise provided by statute. On actions of statewide significance, the hearing may be held in Madison.

(c) The hearing shall be noticed as follows: 1. At least 30 days prior to the hearing, notice shall be mailed to all known departments and agencies required to grant any permit, license or approval necessary for the proposal; to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposal lies, to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposal lies and to interested persons who have requested such notification.

2. Publish a class I notice as defined in ch. 985, Stats., in a newspaper circulated in the area affected, or in the official state paper for actions of statewide significance at least 25 days prior to the hearing.

3. Notwithstanding subs. 1. and 2., notice of hearing on an EIS concerning administrative rules shall be given in the same manner as notice is given for rules hearings.

(3) **RECORD OF EIS INFORMATIONAL HEARING.** After the hearing in sub. (2), the department shall carefully review the hearing record and summarize the comments received on the EIS and the proposed action, before making a decision under sub. (4) or (5).

(4) **DECISION ON ACTION OR PROPOSAL ON WHICH A CONTESTED CASE HEARING IS NOT REQUIRED.** (a) Any person may petition for an opportunity to cross examine the person who is responsible for a specific portion of an EIS or present witnesses or evidence. The petition shall include a statement of position on the action or proposal and specific statements and issues that are desired to be cross examined or presented. Petitions for opportunity to cross examine shall be filed with the department within 20 days after the notice of the EIS hearing is published in sub. (2) (c) 2. The notice in sub. (2) (c) 2, published in conformance with sub. (2) (c) 1. shall include a statement that the failure to file the petition provided for in this subsection shall preclude the opportunity to cross examine.

(b) If the department finds that the action or proposal may affect substantial interests of the petitioner, an order shall be issued stating what persons will be made available for cross examination. Denials of petitions shall be in writing. Failure to issue an order within 10 days of the filing of the petition shall constitute a denial.

(c) The opportunity to cross examine shall be given after the informational portion of the hearing is completed.

(d) After the close of the informational hearing described in sub. (2), the department shall enter a final written decision on the proposed action or proposal stating findings of fact, including findings as to environmental impact. The burden of establishing compliance with s. 1.11, Stats., is upon the agency.

(5) When the final decision on an action or proposal is to be made after a contested case hearing as defined in s. 227.01 (2), Stats., and the decision is a major state action under s. 1.11, Stats., the following procedures shall be followed:

(a) Persons wishing to become a party to the contested case proceeding shall serve a notice of appearance on the department within 30 days of the date of the notice of hearing. The notice of the contested case hearing shall include a statement that the failure to file the notice of appearance shall preclude objecting to the admissibility of the EIS at the hearing.

(b) A prehearing conference may be scheduled pursuant to s. 227.09 (1) (f), Stats., to file motions concerning or objecting to the admissibility of portions of the environmental impact statement (EIS). Motions shall be limited to those portions of the EIS concerning issues that will be decided in the contested case hearing. Motions shall be served on the parties to the proceedings 10 days before the prehearing conference, unless the examiner orders otherwise.

(c) 1. The portions of the EIS not objected to by motion in par. (b) shall be admitted into evidence at the contested case hearing.

2. The portions of the EIS subject to motion under par. (b) may be admitted as evidence at the hearing after parties have an opportunity to cross examine witnesses and offer countervailing or rebutting evidence or a stipulation of the parties.

3. The examiner shall deny any motion at the prehearing conference that is ambiguous, overbroad or is not supported by sufficient allegations and information to make that portion of the EIS inadmissible under s. 908.03, Stats.

(6) This section is applicable to the extent it does not conflict with the procedures and rules of another agency if that agency is the lead agency on the EIS.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. Register, June, 1979, No. 282, eff. 7-1-79.

NR150.10 Proposed actions involving NEPA. (1) Where a proposed action involves a federal agency approval or decision and it has been determined that an EIS must be prepared in accordance with NEPA, the WEPA requirement for a state EIS shall not be waived unless:

(a) After review of the NEPA EIS by the department, it appears that the requirements as to content of the EIS prescribed in s. 1.11, Stats., and this chapter have been met; and;

(b) The NEPA EIS was developed and prepared with substantial participation of the department with the federal agency in a coordinated effort to fully satisfy both the requirements of NEPA and WEPA.

(2) If the NEPA EIS appears to comply with the requirements of WEPA and this chapter, a public hearing shall be held in accordance with this chapter unless a public hearing is held in Wisconsin by the lead federal agency.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 150.11 Environmental impact statement charges. (1) In accordance with s. 23.40, Stats., the department will charge a fee for the preparation of an EIS on actions requiring permission from the department. This section shall not apply, however, to applications of municipalities, as defined under s. 345.04 (1) (a), Stats., or to related environmental impact statements.

(a) Any person as defined in NR 150.02 (17), with the exception of municipalities, state agencies, departments, boards and commissions included in ch. 15, Stats., and the federal government, who files an application for a permit, license or approval granted or issued by the department, shall include with the application an estimate of the cost of the project or proposed action when deemed necessary by the department.

(b) In determining the estimated cost, the applicant shall include both structural and nonstructural costs such as, but not limited to:

1. Land and land rights
2. Structures, appurtenances and improvements
3. Project facilities and equipment
4. Site preparation

5. Labor costs

6. Technical costs (i.e., architectural and engineering design and biological data collection)

7. Financial costs (i.e., escalation costs and interest charges)

8. Other costs necessary to complete the project

(c) In determining the estimated cost, costs shall be projected to the anticipated date of operation of the proposed project. If estimated project costs are required by the public service commission in conjunction with a proposed project or action, the format required by the commission may be used for supplying costs to the department.

(d) The department may seek such further information as it deems necessary to determine whether it must prepare an EIS under s. 1.11, Stats.

(e) If the department determines that an EIS shall be required for the proposed project or action in accordance with NR 150.04, it shall send a letter to the applicant stating its intent to prepare an EIS and requesting a certified statement of the estimated cost of the proposed project or action. The following format will be used by the applicant to certify the estimated cost:

Department of Natural Resources
Bureau of Environmental Impact
Box 7921
Madison, Wisconsin 53707

Date _____

Gentlemen:

I hereby certify that the estimated cost of the (*name of proposed project or action*) is \$ _____ and that the itemized list of these costs which is attached to and made a part of this certification is based on current records of the (*name of applicant/company*) which are available for Department of Natural Resources inspection if required.

(*signature of responsible official*)
(*name and address of applicant/company*)

(f) Upon receipt of the certified statement, the department shall notify the applicant by certified mail the estimated full cost of the preparation of the EIS. The estimated fee costs are as follows:

1. For a proposed action or project whose estimated cost is five million dollars or less, the estimated fee shall be \$10,000.00.

2. For a proposed action or project whose estimated cost is more than five million dollars but less than 20 million dollars, the estimated fee shall be \$10,000.00 or .25% of the estimated cost, whichever is greater.

3. For a proposed action or project whose estimated cost is more than twenty million dollars but less than one hundred million dollars, the estimated fee shall be \$50,000.00 or .15% of the estimated project cost, whichever is greater.

4. For a proposed action or project whose estimated cost is more than one hundred million dollars, the estimated fee shall be \$150,000.00 or .10 percent of the estimated cost, whichever is greater.

(g) The department shall charge a fee based on the full cost of the preparation of the EIS incurred subsequent to the decision that an EIS is necessary. The full cost shall include the following:

1. Actual salary costs, including benefits, for time spent by department staff for: coordination, problem identification and data collection leading to the submittal of an EIR by the applicant, if required; review of the applicant's EIR, if required; data collection and analysis leading to and including the preparation of the PER and EIS; and the public hearing on the EIS.

2. Administrative overhead and support costs to be calculated at the current approved department rate based on total salary costs.

3. The full cost of any consultant retained by the department to collect or analyze data, to prepare the PER, or to prepare draft portions of the EIS for department use in developing the EIS.

(h) The department shall not include in the EIS fee costs associated with the following:

1. Non-EIS related consultation and review of permit application or plans for department approval, and associated public hearings.

2. EIS related department activities reimbursed by the applicant by the payment of permit or plan review fees, if any, under another statute.

3. Department staff time spent on EIS related activities that are reimbursed by the federal government.

(i) The department shall establish accounting procedures that will allow actual costs for development of an EIS on a project to be accurately determined.

(j) Following the department's determination that an EIS is required, the department may bill the applicant as often as every 3 months for actual department costs incurred up to that time. The applicant shall remit to the department the full amount of any EIS fee invoice within 60 days of the date of the invoice. The department shall cease work on the EIS if the full amount of any EIS fee invoice is not paid within 60 days of the date of the invoice. The department shall determine the full amount of the EIS fee and notify the applicant within 30 days following the close of the EIS hearing and bill the applicant for any unpaid portion of the EIS fee. The applicant shall pay the entire fee prior to the department's determination on the adequacy of its EIS and compliance with WEPA.

(k) If the final EIS fee determined by the department exceeds the estimated EIS fee by more than 25%, the department shall provide the applicant with a written explanation of the additional costs. The department shall, if requested, permit the applicant to examine the department's records and accounting procedure regarding the applicant's project.

(l) If the applicant withdraws the application(s) for a proposed project or action for any reason once the process of proposing an EIS has been initiated, the department shall determine actual cost incurred to the date of the withdrawal and the applicant shall be responsible for these costs.

(m) Payment of fees for the preparation of an EIS pursuant to s. 23.40, Stats., shall not be construed to imply department consent or approval of the proposed project or action; to commit the department in any way to grant or deny any permit, license, approval or authority; to limit in any way subsequent essential and approved modifications, future ordered changes and statutory obligations of the department to enforce criteria or standards of environmental quality; or to restrict the department in any way from acting or not acting upon the recommendations or certifications of any other federal, state, county or municipal government or agency or otherwise.

(n) If the EIS is found to be legally or technically inadequate as a result of the public hearing process or by a court of law, the department may seek additional information from the applicant. Under these circumstances the applicant will not be charged an additional fee for preparing an addendum to the EIS.

(2) The fees collected under this section shall be deposited in the general fund.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 150.12 Severability. Should any section, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.